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In re Application of:
Frederick J. LANDRAM, ET AL
Application No. 10/688,316
Filed: October 20, 2003
For: **SELF CONFIGURING MOBILE
DEVICE AND SYSTEM**

**DECISION ON PETITION
UNDER 37 C.F.R. § 1.181
TO CONSIDER**

This is a decision on the Petition filed November 21, 2007 under 37 CFR § 1.181 to invoke Supervisory Authority and require the Examiner to consider the Declaration filed on September 11, 2007.

The petition is **DISMISSED AS MOOT**.

RELEVANT PROSECUTION HISTORY

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| July 18, 2006 | A Final Office action was mailed. |
| May 24, 2007 | A Petition to revive the instant application under 37 CFR 1.137(a) was filed. The applicant asserted that the delay for filing a response was unavoidable because of the non-receipt of the Final Office action. A Declaration under 37 CFR 1.131 was also filed as Reply to the July 18, 2006 Final Office. |
| June 4, 2007 | Decision on the petition was GRANTED and stated to return the application to the Technology Center AU 2141 for consideration of the Reply as being timely filed. |
| July 13, 2007 | An Advisory action was mailed, indicating the Reply did not place the application in condition for allowance and the Declaration under 37 CFR 1.131 would not be entered. |

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| Aug 29, 2007 | A miscellaneous communication (PTO-90C) was mailed; thus, the mailing date of the Final Action was re-started. |
| Sep 11, 2007 | A Response including the Declaration under 37 CFR 1.131 was filed. |
| Oct 02, 2007 | An Advisory action was mailed, indicating the Response filed Sep 11, 2007 would not be entered. |
| Nov 21, 2007 | The instant Petition was filed, requesting the Examiner to consider the 37 CFR 1.131 Declaration mailed Sep 11, 2007. The petitioner alleges that the Declaration was timely and a showing of good and sufficient reasons why the declaration was necessary and was not earlier presented was provided at the time. |
| Dec 31, 2007 | A Request for Continue Examination (RCE) under 37 CFR 1.114, a request for 1-month extension of time and an amendment were filed. |

ANLYSIS

MPEP § 710.06 (I.)(C) states that the Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when:

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

In review of the Decision mailed June 4, 2007, it is noticed that the decision, though not explicitly stated, implied that the date of the Final Office action was restarted upon the information of the non-receipt Final Office action by the examiner on Mar 26, 2007. The date of receipt was established when the applicant viewed the Final Office Action via the Patent Application Information Retrieval (PAIR) system to prepare his Reply of May 28, 2007. On Aug 29, 2007, the examiner of record mailed out another Final Office action; thus, a new shortened statutory period for response to the Final Office action has been set to August 29, 2007.

MPEP § 706.07(h)(V) states, in part:

If an applicant timely files an RCE with the fee set forth in 37 CFR § 1.17(e) and a submission that meets the reply requirement of 37 CFR § 1.111, the Office will withdraw

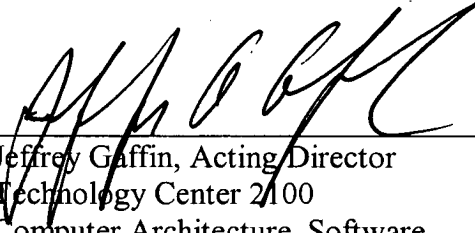
the finality of any Office action to which a reply is outstanding and the submission will be entered and considered ...

In view of MPEP § 706.07(h)(V) and the timely filing an RCE with the fee set forth in 37 CFR § 1.17(e) and an amendment including a 131 Declaration that meets the reply requirements of 37 CFR § 1.111, the Office is hereby withdrawn the finality of any Office action to which a reply is outstanding and the amendment will be entered and considered.

For the above stated reasons, the petition is **DISMISSED AS MOOT.**

Upon the mailing of this decision, the application will be forwarded to the Technology Center support staff for processing and entering the RCE and the amendment filed on December 31, 2007. From there, the application will be forwarded to the examiner for appropriate action.

Any inquiry concerning this decision should be directed to Kim Huynh, whose telephone number is (571) 272-4147.



Jeffrey Gaffin, Acting Director
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and Information Security